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Attorney for Charles C. Johnson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

NATIONAL ABORTION FEDERATION

Plaintiff,

v.

CENTER FOR MEDICAL PROGRESS, *et al*

Defendants.

Case No.: 15-CV-03522-WHO

**DECLARATION OF MEUSER IN
SUPPORT OF MOTION TO QUASH THE
SUBPOENA OF CHARLES C. JOHNSON**

Date: Dec. 9, 2015

Time: 2:00pm

Location: Courtroom 2, 17th Floor

Re: Dkt. Nos. 185, 191, and 192

I, Mark P. Meuser, do hereby declare:

1. I have personal knowledge of the facts set forth herein. If called as a witness, I can and will testify competently to the following:

2. Attached as Exhibit 1 is a true and correct copy of the Subpoena to Testify at A Deposition in a Civil Action given to me by my client Charles C. Johnson.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. If called to testify to the matters set forth herein, I could and would do so competently.

Executed on November 2, 2015 at Walnut Creek California.

/s/ Mark P. Meuser

Mark P. Meuser, SBN 231335

Exhibit 1

UNITED STATES DISTRICT COURT

for the

Northern District of California

NATIONAL ABORTION FEDERATION

Plaintiff

v.

THE CENTER FOR MEDICAL PROGRESS, DAVID
DALEIDEN, ET AL*Defendant*

Civil Action No. 3:15-cv-3522-WHO

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Charles C. Johnson
270 Mesa Ave., Clovis, CA 93611

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Keleher's Certified Shorthand Reporters
1540 E. Shaw Ave., Suite 122
Fresno, CA 93710

Date and Time:

11/06/2015 12:00 pm

The deposition will be recorded by this method: Video and stenographic

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Attachment A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/30/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) NATIONAL ABORTION FEDERATION

, who issues or requests this subpoena, are:
Derek F. Foran, Morrison & Foerster LLP, 425 Market St., San Francisco, CA 94105, DForan@mofo.com; (415) 269-6323

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**Compliance.**

(1) Hearing, or Deposition. A subpoena may command a person to appear at a trial, hearing, or deposition on the following terms:

- (i) within 100 miles of where the person resides, is employed, or regularly conducts business in person; or
- (ii) at a place within 100 miles of where the person resides, is employed, or regularly conducts business in person if the person is a party's officer, or
- (iii) at a place outside those limits if the person is commanded to attend a trial and would not incur substantial expense.

(2) Discovery. A subpoena may command a person to produce documents, electronically stored information, or tangible things within 100 miles of where the person resides, is employed, or regularly conducts business in person; and to permit inspection at the premises to be inspected.

(3) Person Subject to a Subpoena; Enforcement.

(A) Burden or Expense; Sanctions. A party or attorney requesting and serving a subpoena must take reasonable steps to avoid undue burden or expense on a person subject to the subpoena. The district where compliance is required must impose an appropriate sanction—which may include reasonable attorney's fees—on a party or attorney who

(4) Person to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

1. Copies of all communications, including emails, instant messages, telephone records, and text messages, with David Daleiden from July 1, 2015 through the time of the deposition.
2. Copies of all communications, including emails, instant messages, telephone records, and text messages, with any person using, or who you believed to use, the username "patriotgeist."
3. A complete copy of all materials allegedly sent to you by the person using the username "patriotgeist."
4. Copies of all communications, including emails, instant messages, telephone records, and text messages, concerning material covered by the Temporary Restraining Order or material created by David Daleiden and/or the Center for Medical Progress from October 8, 2015 through the time of the deposition.